

§ 406.2 Premium rates, amounts of insurance, and coverage levels at which indemnities shall be computed.

(a) The Manager shall establish premium rates, amounts of insurance, and coverage levels, for the insured crop which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level from among those contained in the actuarial table for the crop year.

§ 406.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 406.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 406.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the nursery insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation or a Reinsured company:

(1) Is indebted to the Corporation or a Reinsured company for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation (the Manager in cases involving not more than \$100,000) or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Request for relief under this section must be submitted, in writing, to the Corporation or to the Reinsured Company, whichever is applicable.

[54 FR 3412, Jan. 24, 1989, as amended at 54 FR 33494, Aug. 15, 1989]

§ 406.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company and payment of the premium due. The contract shall cover the nursery crop as provided in the policy. The contract shall consist of the application, the policy and any amendments thereto, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. No indemnity will be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the applicable service offices.

§ 406.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the nursery crop as owner if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive.

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The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will come into effect as a continuation of the contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1989 through 1995 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Nursery Crop Insurance Policy for the 1989 through 1995 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Nursery Crop Insurance

(This is a continuous contract. Refer to Section 15.)

NOTE: This is a contract with the Federal Crop Insurance Corporation, a United States Government Agency. The terms of the contract are published in the FEDERAL REGISTER under the provisions of the FEDERAL REGISTER Act (44 U.S.C. 1501), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with ALL provisions of the crop insurance contract.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

1. Insured Crops

a. The crops insured will be all nursery crops grown in the county in standard nursery containers which are listed on the eligible plant listing located in the actuarial table.

b. We do not insure any nursery crops which:

- (1) Are not grown in standard nursery containers;
- (2) Are not classified as woody, herbaceous, or foliage landscape plants;
- (3) Produce citrus fruit or other edible fruits or berries;
- (4) Are grown in the field;
- (5) Are not listed on the eligible plant listing located in the actuarial table;
- (6) Have not been inspected prior to submission of your application;
- (7) Are inspected by us and determined unacceptable;
- (8) Are not grown in a hardiness zone listed on the eligible plant listing for those crops; or
- (9) Are not grown in accordance with the production practices for which premium rates have been established.

2. Causes of Loss

a. The insurance provided is against unavoidable damage resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or
- (8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table.

b. We do not insure against any loss caused by:

- (1) The neglect, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;
- (2) The failure to follow recognized good production practices for nursery crops;
- (3) Water contained by any governmental, public, or private dam or reservoir project;
- (4) Flooding on any unit subject to a flood or water flowage easement;
- (5) Failure or breakdown of irrigation equipment or facilities;
- (6) Failure to carry out a good irrigation practice for the nursery crops;
- (7) The inability to market the nursery crop as a direct result of quarantine, boycott or refusal of any entity to accept production;
- (8) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled; or
- (9) Any cause not specified in this policy as an insured cause of loss.

c. You must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on the insured crops. More than one policy will result in our voiding the policies and collecting the

premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

d. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Pub. L. 99-198) and the regulations promulgated thereunder, generally referred to as the sodbuster, swampbuster, and controlled substance provisions. Your insurance policy will be cancelled if you are determined to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

3. Nursery Crop Report

a. You must submit an annual crop report to us of all of your eligible nursery crops in the county by unit, type, container size, number of plants and wholesale price of plants for each month of the crop year. This report must be submitted on or before September 30 preceding the crop year.

b. Your crop report may be revised only with our consent.

c. We may determine all losses on the basis of information on your crop report or the inventory as determined by us.

d. You must designate separately any inventory which is not insurable. Your annual crop report will be used as the basis to determine your premium and the amount of insurance for each unit. If you do not submit the report by the reporting date, we may elect to determine the inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of adjusting a loss.

4. Amount of Insurance and Coverage Level

a. The amount of insurance and coverage levels are contained in the actuarial table and must be elected on or before September 30 prior to the crop year.

b. You may change the amount of insurance and the coverage level on or before the sales closing date for that crop year.

5. Annual Premium.

a. The annual premium is earned and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective. Interest will begin to accrue on March 31 of the crop

year. Premium will be delinquent on the termination date.

b. Except for the 1993 and 1994 crop years, coverage will not begin if the premium due under this policy is not paid when due and payable. For the 1993 and 1994 crop year only insurance will attach on October 1, preceding the crop year.

c. The annual premium amount for each unit is computed in accordance with these subsections:

(1) Develop an inventory of all eligible containerized crops, by type of crop and container size, for each month of the proposed policy period.

(2) Apply market values to these inventory numbers using your wholesale price list. If you discount prices published in your wholesale price list, the discounted prices must be used in calculating market values. Record these monthly values by type of crop on your insurance application.

(3) Add the total monthly market values separately for each type of crop and divide that monthly total for each crop by the number of months in the crop year to get the "Average Monthly Market Value".

(4) Add the Average Monthly Market Value for each of the eligible crops in the unit to get the "Yearly Average".

(5) Multiply the Yearly Average by 90% to obtain the "Field Market Value".

(6) Multiply Field Market Value by the coverage level.

(7) Multiply this result by the applicable premium rate contained in the actuarial table.

6. Amounts Due Us

a. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid balance due us. Interest will start on the date that notice is issued to you for the collection of any amount determined to be due. Interest, penalties and costs will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days past due (31 U.S.C. 3717(e)(2)) is six percent (6%) per annum. Interest on any amount due us found to have been received by you because of fraud or misrepresentation will start on the date you received the amount with the penalty beginning 90 days after the notice of amount due is issued to you.

b. All amounts paid will be applied first to costs and penalties, second to accrued interest, and then to reduction of the principal balance.

c. If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest, penalties or principal.

d. Any amount due us may be deducted from any indemnity payment due you, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies and from any amounts due you from any other United States Government Agency.

7. Insurance Period

Insurance attaches on October 1 and ends for each unit at the earliest of:

- a. Sale or disposal of all or a portion of the crop;
- b. Final adjustment of the loss on the part of the insured crop damaged; or
- c. September 30 of the crop year.

8. Notice of Damage or Loss

In case of damage or probable loss you must:

- a. Provide sufficient care to protect the crop from further damage;
- b. Provide us with written notice within 72 hours of your discovery of the loss and obtain our written consent prior to:
 - (1) Destroying, selling or otherwise disposing of any crop that is damaged; or
 - (2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured crop; and
- c. Upon our request, provide complete copies of your nursery crop wholesale price list for the 12-month period immediately preceding the loss and your marketing records for the same period.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

- (1) Your loss; or
- (2) September 30 of the crop year.

b. We will not pay any indemnity unless you:

- (1) Establish the value of the insured crop on the unit and that any loss of value has been directly caused by one or more of the insured causes during the insurance period; and
- (2) Furnish all information we require concerning the loss.

c. The production to count (containers) will be all plants eligible for insurance in a unit.

d. The indemnity will not exceed the lesser of:

- (1) The amount of insurance applicable to the unit less 90% of the value of the crop remaining on the unit after the loss; or
- (2) The amount, calculated for each unit as follows:

(a) Subtract field market value B from field market value A (see section 17) to determine the total amount of loss; and

(b) Subtract therefrom the annual loss deductible.

e. Annual Loss Deductible amounts will be applied on an annual aggregate loss deductible basis for each individual unit insured for the crop year. Individual insured losses occurring on the same unit during the crop year may be accumulated (but each loss must be reported and valued by us). The total amount of insured losses on a unit during the crop year, less the annual aggregate loss deductible applicable to that unit, is the amount payable under this policy for that unit during the crop year, as limited by the amount of insurance for that unit.

f. The value of production of any insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

g. If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI-78 or FCI-78-A, "Request To Exclude Hail And Fire."

h. You must not abandon any part of the insured crop to us.

i. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

j. An indemnity will not be paid unless you comply with all policy provisions.

k. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. (State and local laws to the contrary are not applicable to this insurance contract). We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date and submit to us the properly completed FCIC claim form. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the FEDERAL REGISTER semiannually on or about January 1 and July 1 of each year and will vary with each publication.

l. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

m. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. (For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire).

10. Concealment or Fraud

We may void the insurance contract on all crops without affecting your liability for premiums or waiving any right, including the right to collect any amount due us, if at any time, you have concealed or misrepresented any material fact or committed any fraud relating to this or any other contract with us. The voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to the applicable indemnity. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under the contract consistent with the transferee's interest.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

13. Subrogation (Recovery of Loss From a Third Party)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Access to Nursery

Any person designated by us will have access to the nursery for purposes related to the contract.

15. Contract Term, Cancellation and Termination Dates

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year after insurance attaches. Thereafter, the contract will continue in force for each succeeding crop year unless cancelled or terminated as provided in this section or unless the premium is not paid.

b. This contract may be cancelled by either you or us for any succeeding crop year by giving written notice on or before September 30, preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before September 30 preceding such crop year for the contract on which the amount is due.

d. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

e. The contract will terminate if no premium is earned for three consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. The date by which contract changes will be available in your service office is August 15 preceding the crop year.

17. Meaning of Terms

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, and related information regarding crop insurance in the county.

b. *Amount of insurance* means the value computed by:

(1) multiplying the Yearly Average by .9 to equal field market value; and

(2) multiplying the result by the coverage level.

c. *Annual loss deductible* means the value computed by subtracting the amount of insurance from the Field Market Value for that unit.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

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e. *Crop* means all plants eligible for insurance on the unit as reported on the nursery crop report.

f. *Crop year* means the period beginning October 1 and extending through September 30 of the next calendar year and is designated by the year in which the crop year ends. (The 1988 crop year would be from October 1, 1987 through September 30, 1988).

g. *Field Market Value "A"* means the total market value of the insured crop for the unit involved (prior to the loss occurrence) had the crop been sold in your markets for the values which would have been reasonably expected in the month which the loss occurred, less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

h. *Field Market "B"* means the total market value of the insured crop for the unit involved in the loss (following the loss occurrence) less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

i. *Insured* means the person who submitted the application accepted by us and does not extend to any other person unless specifically indicated on the application and accepted by us.

j. *Insured crops* means the crops insured under the provisions of this policy.

k. *Loss ratio* means the ratio of indemnity to premium.

l. *Person* means a partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

m. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. *Unit* means all growing locations within a five mile radius of the name insured location designated on your crop report. Growing locations outside of the five mile radius of the name insured location but within the county may be designated in the unit or as a separate unit. If they are not designated in the unit or as a separate unit, they will be included in the closest unit listed.

18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in

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accordance with Appeal Regulations (7 CFR part 400, subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

21. Dates, Reports, and Notices

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or any of the requirements thereof, from this section does not relieve you of the requirement to comply with the terms of this contract.

a. *Application*— A form required by subpart D of part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) for the first crop year for which an insurance policy is requested by the insured.

b. *Assignment of indemnity*— A transfer of contract rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

c. *Claim for indemnity* (See: section 9)—A claim made by the insured for damage or loss to the insured crop.

d. *Contract change date* The date by which FCIC makes any contract changes available for inspection in the service office (See: Section 16).

e. *Crop report*— A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all inventory of nursery crops in the county whether insurable or uninsurable and must be filed on or before September 30 prior to the crop year.

f. *Damage, notice of*— (See: Probable loss, Notice of).

g. *End of insurance period, Date of*— The date upon which the insured's crop insurance coverage ceases (See: section 7).

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h. *Insurance attaches, Date*— October 1 of the crop year.

i. *Intent to abandon, Notice of*— The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for the crop.

j. *Probable loss, notice of*— A written notice required to be filed in the service office whenever an insured believes that the nursery crops have been damaged to the extent that a loss is probable (See: section 8).

k. *Reporting date*— The crop reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable inventory in the county in which you have a share at the time insurance attaches.

l. *Sales closing date*— The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed. The sales closing date of this policy is September 30.

22. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[54 FR 3412, Jan. 24, 1989; 54 FR 14206, Apr. 10, 1989, as amended at 55 FR 35888, Sept. 4, 1990; 57 FR 54683, Nov. 20, 1992; 58 FR 33508, June 18, 1993; 58 FR 46074, Sept. 1, 1993; 59 FR 35614, July 13, 1994; 59 FR 39414, Aug. 3, 1994; 60 FR 56935, Nov. 13, 1995]

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2000 AND SUCCEEDING CROP YEARS

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AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 64 FR 30219, June 7, 1999, unless otherwise noted.

§ 407.1 Applicability.

The provisions of this part are applicable only to those crops and crop years for which a Crop Provision is contained in this part.

§ 407.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this part on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*) (the Act). The crops and counties shall be designated by the Manager of the Federal Crop Insurance Corporation (FCIC) from those approved by the Board of Directors of FCIC.

(b) The insurance will be offered through companies reinsured by FCIC under the same terms and conditions as the contract contained in this part. These contracts are clearly identified as being reinsured by FCIC. Additionally, the contract contained in this part may be offered directly to producers through agents of the United States Department of Agriculture. Those contracts are specifically identified as being offered by FCIC.

(c) No person may have in force more than one insurance policy issued or reinsured by FCIC on the same crop for the same crop year, in the same county, unless specifically approved in writing by FCIC.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, in the same county, that have not been properly approved by FCIC, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of FCIC that the multiple contracts of insurance were inadvertent and without the fault of the person.

(e) If the unapproved multiple contracts of insurance are shown to be inadvertent, and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop in the county for that crop year will be canceled. No